IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

NO. **75-5281**

RONNIE YOUNG,
Petitioner

v.

STATE OF NORTH CAROLINA,
Respondent

BRIEF OF RESPONDENT, STATE OF NORTH CAROLINA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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I N D E X

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OPINION BELOW

Petitioner's conviction in Mecklenburg County Superior Court was affirmed by the North Carolina Supreme Court in an opinion reported at 287 N.C. 377, 214 S.E. 2d 763 (1975) and a copy thereof has been furnished to the Court as petitioner's Appendix "A". From the decision of the Supreme Court of North Carolina, petitioner has filed this Petition for Writ of Certiorari to the Supreme Court of North Carolina.

JURISDICTION

Petitioner has sought to invoke the jurisdiction of the Court pursuant to 28 U.S.C. § 1257(3), by alleging a deprivation of rights he contends are secured by the Constitution of the United States.

QUESTION PRESENTED

APPELLANT ASSERTS THAT HIS PETITION PRESENTS THE QUESTION OF WHETHER THE "DEATH SENTENCE WAS UNCONSTITUTIONAL IN NORTH CAROLINA ON AUGUST 18, 1973".

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Petitioner's appeal is apparently predicated upon the eighth, and fourteenth amendments to the Constitution of the United States, which provide, inter alia:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (U.S. Const. amend. VIII).
>
> . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const. amend. XIV, § 1).

B. Additionally, petitioner's appeal also involves North Carolina General Statute 14-17 as construed by the North Carolina Supreme Court in State v. Waddell, 282 N.C. 431, 194 S.E. 2d 19 (1973), which applied this Court's decision in Furman v. Georgia, 408 U.S. 238 (1972):

N. C. General Statute § 14-17. Murder in the first and second degree defined; punishment.-

> A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, burglary or other felony, shall be deemed to be murder in the first degree and shall be punished with death: Provided, if at the time of rendering its verdict in open court, the jury shall so recommend, the punishment shall be imprisonment for life in the State's prison, and the court shall so instruct the jury.* All other kinds of murder shall be deemed murder in the second degree, and shall be punished with imprisonment of not less than two nor more than thirty years in the State's prison.

STATEMENT OF THE CASE

At the July 29th 1974, term of Mecklenburg County, North Carolina, Superior Court, the petitioner was pursuant to G.S. 14-17, supra, tried and convicted for the August 18, 1973 first degree murders of Steve Helton and Sharon Williams. Prior to entering his plea to the charges against him, the defendant timely moved

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* Subsequent to this Court's decision in Furman, the North Carolina Supreme Court in State v. Waddell, 282 N.C. 431, 194 S.E. 2d 19 (1973) declared the portions set forth in italics above unconstitutional.

to quash the homicide indictments against him, contending they violate the eighth and fourteenth amendments to the the United States Constitution. Upon the jury verdict of guilty as to both counts, and the mandatory pronouncement of the death penalty, the defendant moved to arrest judgment upon similar contentions. The petitioner now assigns as constitutional error the disallowance of his pretrial and post judgment motions.

ARGUMENT

CAPITAL PUNISHMENT, IPSO FACTO, IS NOT CRUEL AND UNUSUAL PUNISHMENT WITHIN THE MEANING OF THE EIGHTH AMENDMENT, AND HAS NOT BEEN ARBITRARILY AND SUBJECTIVELY APPLIED AGAINST THE PETITIONER, WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT.

Petitioner's argument is not directed to any error committed at the trial below but is instead solely predicated upon the broad premise that the death sentence as pronounced herein, was arbitrarily, capriciously and subjectively applied, and constitutes cruel and unusual punishment. It is the identical conceptual argument against the imposition of the death penalty which was presented to the Supreme Court of North Carolina at the trial below. Exactly identical arguments were received by this Court upon identical questions in the Petition for Writ of Certiorari filed by Henry N. Jarrette, petitioner, vs. The State of North Carolina, respondent, No. 73-6877 and in the Brief for Jesse Thurman Fowler, petitioner, vs. The State of North Carolina, respondent, On Writ of Certiorari To The Supreme Court of North Carolina, No. 73-7031. The case at bar, as in Fowler and Jarrette, supra, was tried after the decision of the North Carolina Supreme Court in State v. Waddell, 282 N.C. 431, 194 S.E. 2d 19 (1973) which applying Furman v. Georgia, 408 U.S. 238 excised from former North Carolina General Statute 14-17 the statutory provision that upon conviction of first degree murder, a jury might recommend that life imprisonment, rather than the death sentence, be imposed, and before the later legislative amendment thereof, effective April 8, 1974, which established a mandatory death sentence for certain specifically designated criminal offenses.

Fowler, supra, now pending before this Court, is thus squarely determinative of the constitutional questions raised by this petitioner. The State of North Carolina, through its Attorney General, still affirmatively adheres to those arguments and authorities posited by it as respondent in answer to the identical constitutional questions raised and addressed in Fowler and Jarrette, and consequently, for purposes of this appeal, same are hereby expressly adopted, affirmed, and incorporated by reference.

CONCLUSION

Petitioner has posited no argument or authority not heretofore before this Court. The question of whether capital punishment is cruel and unusual per se has previously been presented to this Court. Consequently, the State of North Carolina, respondent respectfully requests that petitioner's petition for writ of certiorari to the Supreme Court of North Carolina be denied.

Respectfully submitted this the 31st day of October, 1974.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 1975, a copy of the foregoing Brief for the Respondent in opposition was mailed, postage prepaid, to Mr. George C. Callie, 800 Law Building, Charlotte, North Carolina 28202.

Myron C. Banks
Special Deputy Attorney General

A Member of the Bar of the
Supreme Court of the United States